



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and guidelines regarding the allocation of gains from sales of energy, telecommunications, and water utility assets.

R.04-09-003

**COMMENTS OF AGLET CONSUMER ALLIANCE
ON PROPOSED DECISION OF PRESIDENT PEEVEY
AND ALTERNATE PROPOSED DECISION OF ALJ THOMAS**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Aglet Consumer Alliance (Aglet) submits these opening comments on the proposed decision (PD, Agenda ID #6865) of President Michal Peevey and the Alternate Proposed Decision (APD, Agenda ID #6866) of Administrative Law Judge (ALJ) Sarah Thomas in the Commission's rulemaking on gain on sale. Opening comments are due Wednesday, August 22, 2007. Aglet will submit this pleading to the Docket Office electronically on the due date, intending that it will be timely filed.

The PD and APD would: (1) adopt definitions for major utility facilities; (2) determine rate of return for facilities purchased using proceeds from sale of assets treated as contributions in aid of construction (CIAC); and (3) resolve issues relating to condemnation of water utility facilities. The PD and APD differ only with respect to the third issue, condemnation of water utility facilities, which Aglet has not addressed in this proceeding. Therefore, Aglet's opening comments apply equally to the PD and the APD.

1. Definition of Major Natural Gas Facilities

There is some confusion in the PD and APD regarding the definition of major natural gas facilities. The two proposed decisions “find that major facility includes, for gas facilities, their storage fields.” (PD and APD, p. 11, bottom partial paragraph.) The finding seems to say that all storage fields or maybe large storage fields are major facilities, but it does not explicitly say so. The proposed decisions then adopt Aglet’s “out of service” definition based on availability of equipment needed to inject or withdraw at a rate of at least 25% of the equipment’s capacity. (PD and APD, p. 12, top three lines.)

The first sentence in the next paragraph disagrees with Aglet about reportable gas storage fields. (PD and APD, p. 12, first full paragraph.) The adopted definition adds to the confusion because it defines major facility as any facility “representing at least 25% of the utility’s storage capacity.” (PD and APD, p. 12, second full paragraph; see also Conclusion of Law 4, PD, p. 30, APD, p. 28, and Ordering Paragraph 2, PD, p. 32, APD, pp. 30-31.) Without explanation, the definition seems to switch from Aglet’s 25% of injection and withdrawal capacity to 25% of storage volume. Or does it use 25% twice?

The proposed definition of major facility inadequately distinguishes storage field capacity (measured as volume, injection rate or withdrawal rate) from the “out of service” criterion. The Commission should separately define “major generation or production facility” to include all storage facilities, or all facilities that represent at least 25% of the utility’s storage capacity by volume, or facilities identified by some other criterion. The definition of “out of service” should follow separately.

Adoption of a 25% criterion to define major facilities would exclude Pacific Gas and Electric Company’s (PG&E’s) Los Medanos storage field, which comprises 16% to 22% of PG&E’s storage capacity. Considering the scale of PG&E’s gas operations, it would be unreasonable to exclude the Los Medanos field from the reporting requirement. A 10% or 15% criterion would include the Los Medanos field, but application of any numerical criterion would not specify which Southern

California Gas Company fields would be covered by the reporting requirement, due to confidential treatment of storage capacity by the utility.

2. Sale of CIAC Property

Aglet recommended a rate of return of zero on utility property bought with proceeds from the sale of CIAC property. The PD and the APD reject the recommendation, but the adopted outcome will provide ratepayers with some protection against rate recovery of profits on assets purchased without cost to investors.

At p. 3 of both the PD and the APD, on text line 16, add the word "property" after "CIAC."

The Commission should clarify the ordering paragraph on ratemaking treatment of gains on sale of CIAC property. In Ordering Paragraph 6 (PD, p. 34; APD, p. 32) the text should be revised as follows:

6. We do not preclude any party from asserting, in an individual water company's general rate case or elsewhere, that its rate of return should be lowered to reflect that some property in its rate base was originally purchased using proceeds from the sale of CIAC property and thus was acquired ~~for free~~ at no cost to investors.

The same revision should be made to underlying discussion language. (PD and APD, p. 20, last sentence in first partial paragraph.)

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Dated August 22, 2007, at Cool, California.

/s/

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CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Reply Comments of Aglet Consumer Alliance" on all parties of record in this proceeding or their attorneys of record. I have served paper copies of the pleading on Assigned Commissioner Michael Peevey and Administrative Law Judge Sarah Thomas.

Dated August 22, 2007, at Cool, California.

/s/

James Weil